

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KRISTI MACALUSO,

*On behalf of herself and all others similarly
Situated*

Plaintiff,

v.

ZIRTUAL STARTUPS, LLC,

Defendant.

:
: **Case No. 2:19-cv-03616**
:
: **JUDGE ALGENON L. MARBLEY**
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: **Magistrate Judge Deavers**
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ORDER

This matter is before the Court on the parties' Joint Motion for Conditional Certification and Notice of this FLSA Collective Action. Docs. 11 & 15. Pursuant to that Motion, the parties have stipulated to the following:

1. The parties are providing for Court approval a jointly-proposed notice, proposed cover email to putative collective action members, and proposed opt-in consent form;
2. Defendant shall within ten (10) days following the Court's approval of conditional certification provide Plaintiff a list in electronic form containing the name, last known home address (including zip code), and last known email address of all putative members identified as follows:

All current and former virtual assistants of Defendant who were paid as independent contractors during the period of three years preceding the commencement of this action to the present.

3. Plaintiff shall mail the notice to the individuals appearing on the list referred to in Paragraph 2 via First Class Mail and send notice electronically by electronic mail. Plaintiff may issue notice by way of a third-party administrator. Costs of any notice shall be borne by Plaintiff, and such notice shall be sent reasonably promptly;

4. The potential plaintiffs shall be provided, and the opt-in period will close as to the potential opt-in plaintiffs, sixty (60) days after Plaintiff's counsel's regular mailing of the jointly proposed notice and opt-in form, and Plaintiff's counsel's emailing of the proposed cover email to putative collective action members along with the proposed notice and opt-in form attached as PDFs. Plaintiff's counsel will send the regular and electronic mailings on the same day,
5. The opt-in period will be extended only if (1) the parties agree to permit late filings, or (2) if ordered by the Court;
6. Except as provided herein, neither party shall contact, either directly or indirectly, any of the potential opt-in plaintiffs concerning this matter through the end of the opt-in period, except that Plaintiff's counsel may respond to inquiries from the potential opt-in plaintiffs during this time, and Zirtual may respond to any inquiries it receives, if any, from potential opt-in plaintiffs, so long as it does not threaten to retaliate or retaliate; and
7. Defendant does not waive any defense as to any issue in this case, and Defendant maintains any and all defenses. Likewise, Defendant reserves the right to later file a motion to narrow or decertify the class.

Conditional certification for FLSA collective actions is available under 29 U.S.C. § 216(b).

At the notice stage before discovery has occurred, "Plaintiffs must only make a modest showing that they are similarly situated to the proposed class of employees." *Lewis v. Huntington Nat'l Bank*, 789 F. Supp. 2d 863, 867 (S.D. Ohio 2011). "[S]imilarly situated class members under the FLSA are those whose causes of action accrued in approximately the same manner as those of the named plaintiffs." *Id.* at 868. "Application of this 'fairly lenient standard . . . typically results in conditional certification.'" *Id.* (citing *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 547 (6th Cir 2006)).

Here, by stipulating to this Conditional Certification, both sides have agreed that Plaintiff has met her burden at this stage of showing that she is similarly situated to all putative collective action members. Accordingly, the Court **GRANTS** the Joint Motion [#11, #15] and all stipulations

contained therein, including the approval of the parties' proposed notice, proposed cover email, and proposed opt-in consent form.

IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: April 7, 2020